

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEI FEI FAN,

Plaintiff,

v.

YANYAO JIANG and WEI WU,

Defendants.

Case No. 3:21-CV-00458-RCJ-CLB

ORDER

Fei Fei Fan (“Fan”) brings this Action against Yanyao Jiang (“Jiang”) for an alleged sex trafficking scheme that the Jiang put her through. Jiang asks this Court to dismiss the Action for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). The Court grants Jiang’s request and will dismiss Fan’s action for failure to state a claim. For that reason, the Court will dismiss Fan’s Motion for Writ Attachment. (ECF No. 4).

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FACTUAL BACKGROUND

This case arises from an affair that Jiang had with Fan while Jiang was married to Wu. (ECF No. 1 at 1). Sometime in 2006, Fan came to the U.S. from China to earn her master's degree from the University of Nevada, Reno ("UNR"). (*Id.*) Fan came to the U.S. on an F1 student visa and worked as a student employee under Jiang, who was a tenured Associate Professor in the Mechanical Engineering Department at UNR. (*Id.*) Fan not only worked under Jiang, but he also served as her thesis advisor for her master's degree, so the two spent a good amount of time together. (*Id.* at 4).

Fan alleges that Jiang created a hostile workplace environment for F1 students. (*Id.* at 4). Allegedly, Jiang intimidated his student employees to strike fear in their hearts that they would lose their status as a researcher and a student, which would strip them of their F1 status. (*Id.*) This allegedly made matters worse for Fan because her family could not support her, so she was reliant on the stipend that Jiang paid her. (*Id.* at 4-5). Without a way to afford her lifestyle or stay in the U.S., Fan allegedly became completely subordinate to Jiang. (*Id.* at 4). Jiang allegedly abused this relationship and forced Fan to go beyond her role as a research assistant to watch Jiang's children. (*Id.* at 6). Fan alleges that Jiang recognized the subordination and forced Fan to enter into a sexual relationship in the fall of 2006. (*Id.* at 1-2).

Fan alleges that Jiang "raped and abused Fan sexually and emotionally" during her master's studies. (*Id.* at 2). While she was earning her master's degree, Fan alleges that Jiang used his position of power to sexually abuse and rape her because he knew that she could not speak up. (*Id.* at 4-5). Fan alleges that Jiang gave her chlamydia in 2007, but she allegedly did not provide his identity to the health clinic out of fear that she would expose Jiang's abuse. (*Id.* at 6). Fan left UNR in 2008, but she alleges that Jiang still initiated and insisted on cyber sex "and Jiang ignored Fan's crying during sexual intercourse." (*Id.* at 7).

1 When Fan decided to return to UNR, she was on an H1 visa as a tenure-track Assistant
2 Professor in the Mechanical Engineering Department. (*Id.* at 7). As an H1 visa holder, Fan needed
3 to remain employed at UNR to stay in the U.S. (*Id.*) Jiang was allegedly assigned as Fan’s mentor
4 and tenure committee supervisor, allegedly creating the same type of subordinate relationship ripe
5 for abuse. (*Id.*) The sexual abuse allegedly continued until Fan approached Jiang and threatened
6 to report the abuse in 2019. (*Id.*)

7 Fan received permanent residency in April of 2020, at which time she decided to inform
8 Wu of Jiang’s abuse. (*Id.* at 8). Jiang allegedly responded with a threat of “physical harm after
9 learning that Fan sent Wu” a text message informing her of Jiang’s alleged abuse. (*Id.*) In May of
10 2020, Wu allegedly “confronted Fan by outrageously knocking at the door of Fan’s apartment.”
11 (*Id.*) Fan did not open the door because she allegedly feared Wu would physically harm her, even
12 though Wu had made not threat to do so. (*Id.*) Fan threatened to call 911 and Wu left Fan’s
13 apartment building. (*Id.*)

14 Fan alleges that Jiang continued to threaten Fan in May of 2020. (*Id.* at 8-9). Allegedly,
15 “Jiang notified Fan over the phone that Wu hated Fan ... that Fan needed to protect herself from
16 physical harm ... [that] Wu wanted to sue Fan for sexual bribery ... [and that] Wu would notify
17 [the] [t]enure [c]ommittee.” (*Id.*) In July of 2020, Jiang and Fan allegedly met at a park to discuss
18 the situation and Jiang continued to threaten Fan. (*Id.*) Later that month, Jiang’s attorney allegedly
19 sent Fan a cease-and-desist letter. (*Id.* at 9). In August of 2020, Jiang allegedly berated Fan for the
20 situation outside of her office at UNR.¹ (*Id.*) Fan further alleges that Jiang threatened to end her
21 life “via text, via phone, and via a recently retired” professor. (*Id.*) “On January 29, 2021, Fan filed
22 a Title IX complaint against Jiang with UNR.” (*Id.*)

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24 ¹ The complaint makes no mention of Fan reporting this behavior to the police even though Fan was questioned
weeks prior in an investigation of someone vandalizing Jiang’s office. (ECF No. 1 at 9).

1 Jiang filed a request for a protective order against Fan shortly after Fan filed the Title IX
2 complaint. (*Id.* at 9). Jiang alleged that Fan vandalized his office, Fan was mentally unstable, Fan
3 purchased a gun with nefarious intent, and the sexual relationship was consensual. (*Id.*) The
4 protective order was not granted, but Fan alleges that the process damaged Fan's professional
5 reputation, employment opportunities, and psychological condition. (*Id.* at 9-10). Fan alleges that
6 Jiang also slandered Fan in the workplace. (*Id.* at 10).

7 In October of 2021, Fan brought this Action against Jiang for alleged sex trafficking under
8 federal and state law, forced labor under federal law, trafficking into servitude under federal and
9 state law, intentional infliction of emotional distress under state law, and defamation under state
10 law. (ECF No. 1). Jiang and Wu both moved for dismissal under Federal Rule of Civil Procedure
11 12(b)(6). (ECF Nos. 5, 7).

12 LEGAL STANDARD

13 Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
14 that fails to state a claim upon which relief can be granted. When considering a motion to dismiss
15 under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint
16 does not give the defendant fair notice of a legally cognizable claim and the grounds on which it
17 rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the
18 complaint is sufficient to state a claim, the court will take all material allegations as true and
19 construe them in the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d
20 896, 898 (9th Cir. 1986). The court, however, is not required to accept as true allegations that are
21 merely conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v.*
22 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

23 A formulaic recitation of a cause of action with conclusory allegations is not sufficient; a
24 plaintiff must plead facts pertaining to his own case, making a violation "plausible," not just

1 “possible.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677–79 (2009) (citing *Twombly*, 550 U.S. at 556) (“A
2 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
3 the reasonable inference that the defendant is liable for the misconduct alleged.”). That is, a
4 plaintiff must not only specify or imply a cognizable legal theory, but also must allege the facts of
5 the plaintiff’s case so that the court can determine whether the plaintiff has any basis for relief
6 under the legal theory the plaintiff has specified or implied, assuming the facts are as the plaintiff
7 alleges. *Id.* The Court may dismiss or strike a claim with prejudice where “the allegation of other
8 facts consistent with the challenged pleading could not possibly cure the deficiency.” *DeSoto v.*
9 *Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (internal quotation marks omitted).

10 ANALYSIS

11 Fan fails to allege facts sufficient to give rise to a claim upon which relief can be granted.
12 Jiang’s alleged conduct, while morally reprehensible, does not meet the legal standard for forced
13 labor and sex trafficking. Fan’s federal causes of action are improper, leaving purely state law
14 claims. For that reason, the Court will dismiss the action against Jiang for failure to state a claim
15 and lack of subject matter jurisdiction. (ECF No. 1). Accordingly, the Court will dismiss the
16 Motion for Writ Attachment because it is moot. (ECF No. 4).

17 I. Sex Trafficking

18 Fan claims that Jiang engaged in sex trafficking from the time that Jiang recruited Fan to
19 UNR in 2006, to when she left campus in 2008. 18 U.S.C. § 1591. The conduct at issue here is not
20 sex trafficking and it occurred outside the statute of limitations.

21 Under the federal statute prohibiting sex trafficking, plaintiffs must bring an action alleging
22 a “commercial sex act” with a connection to “interstate or foreign commerce.” *Id.* The definition
23 of “commercial sex act” includes “any sex act, on account of which anything of value is given to
24 or received by any person.” 18 U.S.C. § 1591(e)(3). Congress noted that “trafficking in persons is

1 not limited to the sex industry,” and that “traffickers lure women and girls into their networks
2 through false promises of decent working conditions at relatively good pay as nannies, maids,
3 dancers, factory workers, restaurant workers, sales clerks, or models.” Pub. L. No. 106-386 § 102,
4 114 Stat. 1488 (2000).

5 *A. 2006 to 2008 Conduct*

6 Under the 12(b)(6) liberal standards, Jiang engaged in a “commercial sex act” from 2006
7 to 2008. Fan alleges that Jiang hired her in 2006 and agreed to pay her wages. (ECF No. 1 at 10-
8 11). The complaint’s allegations do not make it clear whether he said she needed to perform sexual
9 acts for the wages. In fact, the complaint’s language leaves the Court wondering if Fan even asserts
10 that Jiang mandated sex acts in exchange for wages. The complaint states that Jiang “paid for Fan’s
11 sexual services during work time using federal grants.” (*Id.*) The Court reads that to mean that she
12 performed sex acts while she was on the clock, so she was paid for them. Under that reading, she
13 was not forced to perform the sex acts for money, instead, she simply performed sex acts while
14 being paid.

15 It is also unclear whether she was forced to perform the sex acts or if she was in a
16 consensual relationship with Jiang. She alleges that she was abused but her allegations leave some
17 doubt to whether that is true. In the complaint, she states that she left UNR from 2008 to 2015. Fan
18 does not state why she left UNR or if it was related to the alleged sexual abuse, but it became clear
19 during the hearing on this Motion that she left to get her doctorate in Georgia. After receiving her
20 doctorate in Georgia, she decided to return to work under Jiang at UNR, even though she alleges
21 that he had essentially held her immigration status hostage some years earlier. While the Court
22 must take the allegations as true, the facts of this case make Fan’s claims questionable.

23 However, giving Fan the benefit of the doubt at the motion to dismiss stage, Fan states that
24 the subordinate relationship caused her to believe that she needed to perform the acts to continue

1 receiving the wages he provided. The Court draws the inference that this belief could have created
2 the fear that she needed to perform the sex acts for her wages. Because the complaint pleads
3 “factual content that allows the court to draw the reasonable inference” that Jiang mandated the
4 sex acts for the wages, the sexual acts were “commercial” sex acts. *Iqbal*, 556 U.S. at 663, 129
5 S.Ct. 1937 (quoting *Twombly*, 550 U.S. at 556, 127 S.Ct. 1955).

6 Although these were commercial sex acts, Fan’s allegations of sex trafficking fall outside
7 of the applicable statute of limitations. Actions brought under the federal sex trafficking statute
8 must be brought within “10 years after the cause of action arose.” 18 U.S.C. § 1595(c)(1). Fan
9 alleges that Jiang engaged in sex trafficking starting when he raped her from 2006 to 2008, so the
10 clock started to run from that point. Fan brought this action in October of 2021, which is 13-15
11 years after the alleged sex trafficking started and five years after the statute of limitations ended.
12 Accordingly, Fan’s sex trafficking claim for the 2006 to 2008 sex acts falls outside of the statute
13 of limitations.

14 The Court must address Fan’s argument that the statute of limitations does not apply to the
15 earlier conduct and should apply to the later conduct. Fan points to *Roe v. Howard*, to show that
16 federal courts allow sex trafficking actions to proceed when the sex acts occurred beyond the
17 statute of limitations but extended into the statute of limitations. No. 1:16-cv-562 (E.D. Va. Jan 3,
18 2018). First, the facts of that case are strikingly different. The plaintiff in *Roe* engaged in sex acts
19 in 2007 and brought the action in 2016. *Roe v. Howard*, 917 F.3d 229, 237 (4th Cir. 2019). Second,
20 there was no conduct that occurred outside of the statute of limitations. *Id.* Fan has no response to
21 these glaring factual issues, nor can she provide additional facts to cure the challenged pleading.
22 Therefore, the Court will dismiss Count I as to the 2006 to 2008 conduct with prejudice.

23 *B. 2008 to 2015 Conduct*
24

1 Fan alleges that “Jiang initiated and insisted (cyber-)sex with Fan occasionally, and Jiang
2 ignored Fan’s crying during sexual intercourse” from 2008 to 2015. (ECF No. 1 at 7). Fan does
3 not provide the Court with any facts to support the inference that this was a commercial sex act
4 because she does plead facts showing that anyone received anything of value.² 18 U.S.C. §
5 1591(e)(3) (requiring a commercial sex act for a finding of sex trafficking). The complaint states
6 that Fan left Reno and graduated from UNR, so she was no longer receiving wages for her work.
7 (*Id.*) Jiang no longer had any influence over academic career because she was studying in Georgia,
8 so she was no longer receiving value in the form of an education. Without any basis to believe that
9 anyone received anything of value, the Court dismisses Count I as to the 2008 to 2015 conduct
10 with prejudice.

11 *C. 2015 to 2018 Conduct*

12 Finally, Fan alleges that she moved back to Reno to work at UNR as a tenure-track
13 Assistant Professor on an H1 temporary worker visa and Jiang continued to sexually assault her.
14 The complaint does not allege any facts giving rise to the belief that she engaged in commercial
15 sex acts because nobody received anything of value. 18 U.S.C. § 1591(e)(3) (requiring a
16 commercial sex act for a finding of sex trafficking). Fan alleges that she worked with Jiang at UNR
17 during this time, but she does not allege that he had the ultimate authority over whether she kept
18 her job. As opposed to the sex acts performed from 2006 to 2008, Jiang did not have the authority
19 to unilaterally fire her and she could not have believed that he had the power because she points
20 out that three other people sat on her tenure committee. Essentially, Fan did not receive
21 immigration status or wages for the 2015 to 2018 sex acts because Jiang did not have the authority
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23 ² There is also a question of whether these are sex acts. Fan does not state that Jiang initiated and forced cybersex, so
24 that presumably was not a sex act. It is also unclear what Fan means when she says that she cried during intercourse
because she was in Georgia and he was in Nevada. Fan does not plead any facts showing that their relationship
continued in person from 2008 to 2015.

1 to take them away or the authority to provide them to her. Additionally, although Fan received an
2 education, Jiang had no influence over her ability to receive the education.³ Therefore, neither Fan
3 nor Jiang received anything of value from the sex acts. The Court dismisses Count I altogether
4 with prejudice.

5 **II. Forced Labor**

6 Fan's complaint alleges three separate instances of forced labor: (1) babysitting from 2006
7 to 2007, (2) physical sex from 2006 to 2008, and (3) physical sex from 2015 to 2019. The Court
8 assumes, without deciding, that the babysitting and the physical sex from 2006 to 2008 meet the
9 standard for forced labor. Similar to the sex trafficking claim, the babysitting and the physical sex
10 from 2006 to 2008 fall out of the applicable 10-year statute of limitations for a forced labor claim
11 because the claims arose in 2006. 18 U.S.C. § 1595(c)(1). All that remains is the physical sex from
12 2015 to 2019.

13 The prohibition on forced labor comes from the Trafficking Victims Protection Act
14 ("TVPA"), which Congress enacted to "combat trafficking in persons, a contemporary
15 manifestation of slavery whose victims are predominantly women and children, to ensure
16 just and effective punishment of traffickers, and to protect their victims." *Ditullio v. Boehm*,
17 662 F.3d 1091, 1094 (9th Cir. 2011) (quoting Pub. L. No. 106-386, § 102, 114 Stat. 1488
18 (2000)). Congress reauthorized provisions of the TVPA to enhance protections for victims
19 of trafficking and to allow for a private right of action for victims. *Id.*

22
23 ³ Fan alleges that Jiang sat on Fan's tenure committee and Jiang got Fan hired at UNR. (ECF No. 1 at 7). Three
24 other people sat on Fan's tenure committee. (*Id.*) Jiang's vote alone did not have the power to end her academic
career and Fan does not allege that he had influence over the other members of the committee. Further, Fan provides
no facts to support the allegation that Jiang was the reason that Fan got hired. Instead, she undermines the idea that
Jiang got her hired, stating that Jiang "brainwash[ed]" Fan into thinking that Jiang got her hired. (*Id.*)

1 Under the TVPA, plaintiffs must show that the defendant knowingly provided or obtained
2 labor or services from a person:

3 (1) by means of force, threats of force, physical restraint, or threats of physical
4 restraint to that person or another person; (2) by means of serious harm or threats
5 of serious harm to that person or another person; (3) by means of the abuse or
6 threatened abuse of law or legal process; or (4) by means of any scheme, plan, or
pattern intended to cause the person to believe that if that person did not perform
such labor or services, that person or another person would suffer serious harm or
physical restraint.

7 18 U.S.C. §§ 1589(a). The statute does not define labor or services. Blacks Law defines
8 “labor” as “work for wages as opposed to profits,” and “services” as “[l]abor performed in
9 the interest or under the direction of others.” *Labor, Services*, Black’s Law Dictionary (11th
10 ed. 2019).

11 The physical sex from 2015 to 2019 did not constitute forced labor in violation of
12 the TVPA. Fan alleges that she believed “that if [she] withheld sex from Jiang, [she] would
13 suffer harm and damage on her visa, schooling prospects, stipend, degree, and
14 employment.” (ECF No. 1 at 12). Fan’s allegations fall under the fourth means of forced
15 labor that the TVPA prohibits. 18 U.S.C. §§ 1589(a)(4). Under that section, Fan must show
16 that she believed she would suffer serious harm if she did not perform the labor. *Id.*
17 “Serious harm” requires a showing of a threat of physical or nonphysical harm that would
18 compel a reasonable person with the same background and in the same circumstances to
19 perform or continue performing labor to avoid incurring such harm. 18 U.S.C. §§
20 1589(c)(2).

21 Fan could not have believed that she would incur serious harm if she did not
22 perform sex acts for Jiang.⁴ As discussed previously, Fan knew that Jiang did not have the
23

24 ⁴ The Court assumes, without making a finding, that the sex acts were “labor or services” under the TVPA.

1 authority to terminate her or to ruin her attempt to become a tenured professor, so she could
2 not have believed that she would suffer “serious harm” in violation of the act. Fan knew
3 that Jiang did not have the authority so he could not have damaged her “visa, schooling
4 prospects, stipend, degree, and employment.” (ECF No. 1 at 12).

5 Further, allowing this action to go forward on the basis of the physical sex from
6 2015 to 2019 under the TVPA would run afoul of the Act’s purpose. As mentioned
7 previously, the TVPA seeks to protect trafficking victims. The Ninth Circuit found that the
8 TVPA seeks “to combat the modern-day strategies by which traffickers exercise power
9 over their victims.” *United States v. Barai*, 55 F.4th 1245, 1251 (9th Cir. 2022). Fan left
10 UNR in 2008 after graduating, went to Georgia to get her doctorate, and chose to come
11 back to UNR to work with Jiang. Fan does not try to explain why she chose to return to a
12 workplace with an alleged sexual abuser who allegedly caused her serious physical and
13 psychological harm even though she just received a doctorate from a different university.
14 The Court believes that the omission of Fan’s explanation is telling. The Court finds that
15 Fan is hardly the type of plaintiff that the TVPA seeks to protect. Accordingly, the Court
16 will dismiss Count II with prejudice.

17 **III. Trafficking Into Servitude**

18 Fan brings the trafficking into servitude claim in conjunction with the sex trafficking and
19 forced labor claims. This claim relies on 18 U.S.C. § 1590, which provides “[w]hoever knowingly
20 recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in
21 violation of this chapter” shall be found guilty. Because the Court dismissed the claims for sex
22 trafficking and forced labor, Fan can no longer bring this claim. The Court dismisses Count III
23 with prejudice.

24 **IV. State Law Claims**

1 This Court does not have jurisdiction over the case because Fan invoked jurisdiction under
2 federal law and there are no federal claims remaining. *See* 28 U.S.C. § 1331. Diversity jurisdiction
3 does not exist either because both parties are residents of Nevada. 28 U.S.C. § 1332(a)(2) (diversity
4 of citizenship does not exist when a citizen of a foreign state is “lawfully admitted for permanent
5 residence in the United States and . . . domiciled in the same State” as the U.S. citizen).
6 Accordingly, Fan’s state law claims (Count IV, V, VI, VII) against Jiang are dismissed. Because
7 this Court previously dismissed all claims against Wu, this Action is dismissed in its entirety.

8 **V. Writ of Attachment**

9 The Court dismisses Fan’s Motion for Writ of Attachment because it is moot. (ECF No.
10 4).

11 **CONCLUSION**

12 IT IS HEREBY ORDERED that Jiang’s Motion to Dismiss is **GRANTED**. (ECF No. 7).

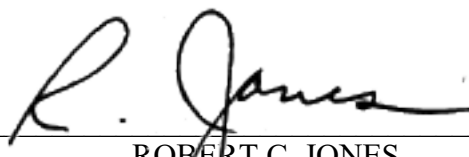
13 IT IS FURTHER ORDERED that Fan’s Motion for Writ of Attachment is **DENIED** as
14 moot. (ECF No. 4).

15 IT IS FURTHER ORDERED that Defendants’ Motion for Summary Judgment is
16 **DENIED** as moot. (ECF No. 93).

17 IT IS FURTHER ORDERED that Fan’s complaint is **DISMISSED** with prejudice. (ECF
18 No. 1). The Clerk of Court shall close this case.

19 IT IS SO ORDERED.

20 Dated this 9th day of September 2023.

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23 _____
24 ROBERT C. JONES
United States District Judge